IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6527 OF 2005
WITH
CIVIL APPLICATION NO. 431 OF 2007

Technofour, a Partnership
Firm ..Petitioner
Vs.
Mr. M.D. Joseph and ors. ..Respondents

Mr. P.S.Dani for petitioner.
Mr. V.G. Peshave for respondent nos.2 and 3.

CORAM: B.H. MARLAPALLE, J.

Date : March 23, 2007.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner and Mr. Peshave the learned counsel for the respondent nos.2 and 3.

2. Civil Suit No. 398 of 1998 has been filed by the present petitioner for eviction of the suit premises and the defendants by their Written Statement filed at Exh. B-77 on or about 11/8/2004 have set up a counter claim. The issues have been framed at Exh.D and the witness for the plaintiff was examined on 23/3/2005. However, on or about 1/4/2005 an

application at Exh.213 came to be filed praying for leave to amend the counter claim and it was opposed by the plaintiff by filing its say at Exh.216. However, by the impugned order dated 12/7/2005 the learned Judge of the Small Causes Court at Pune was pleased to allow the application at Exh.213.

3. In the application at Exh. 213 it was claimed that the cause of action arose for seeking amendment to the counter claim on account of the actions of the plaintiff in as much as on 26/3/2005 they had installed a generator set (approximately 3 tones capacity) and placed adjacent to the western window of the bed-room of the suit premises. It was contended by the plaintiff that the said installation was not in the suit premises and, therefore, such a counter claim was not permissible to be entertained for being considered along with the pending counter claim. The trial court has referred to the scheme of Section 28 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 and allowed the amendment application.

4. Admittedly, the trial of the suit was in progress in as much as the evidence of the parties was being recorded and, therefore, the challenge to the interlocutory order passed need not be entertained at this stage. The plaintiff will be at liberty to raise the challenge on all points, including the challenge raised in this petition, if there be an occasion to approach the higher forum against the decree to be passed by the trial court.

5. Hence, the petition is disposed with such liberty. The plaintiff is at liberty to file their reply to the amended counter claim and if such reply is filed within a period of two weeks, the same shall be taken on record. Undoubtedly on the additional Written Statement on the counter claim the plaintiff will be at liberty to lead evidence and same is the case with the defendants. Interim order stands vacated.

6. Civil Application No. 431 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)